

AMENDED IN SENATE JULY 11, 1996
AMENDED IN SENATE JUNE 24, 1996
AMENDED IN SENATE JUNE 17, 1996
AMENDED IN ASSEMBLY APRIL 18, 1996
AMENDED IN ASSEMBLY APRIL 9, 1996
AMENDED IN ASSEMBLY FEBRUARY 21, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2068

Introduced by Assembly Member Richter
(Coauthor: Senator Lockyer)

January 12, 1996

An act to add Article 17 (commencing with Section 1370) to Chapter 2 of Division 10 of the Evidence Code, relating to hearsay, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2068, as amended, Richter. Hearsay: exceptions.

Existing law, known as the “hearsay rule,” provides that, at a hearing, evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated is inadmissible. Several exceptions to the hearsay rule permit the admission of certain kinds of such evidence, including dying declarations, declarations against interest, and statements of the declarant’s

then existing mental or physical state if offered for specified purposes.

This bill would create a new exception to the hearsay rule for evidence of a statement, made by a declarant who is unavailable, as specified, that purports to narrate, describe, or explain the infliction or threat of physical ~~harm~~ injury upon the declarant by the party against whom the statement is offered, and meets other, specified criteria.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *It is the intent of the Legislature that*
2 *enactment of this statute shall not affect other*
3 *evidentiary requirements, including, but not limited to,*
4 *Sections 351 and 352, shall not impair a party's right to*
5 *attack the credibility of the declarant pursuant to Section*
6 *1202, shall not affect the defendant's right to discovery for*
7 *purposes of producing rebuttal evidence attacking the*
8 *declarant's credibility, and shall not be used in a manner*
9 *inconsistent with the defendant's right to due process and*
10 *to confront witnesses under the United States or*
11 *California Constitution.*

12 SEC. 2. Article 17 (commencing with Section 1370) is
13 added to Chapter 2 of Division 10 of the Evidence Code,
14 to read:

15

16 Article 17. Physical Abuse

17

18 1370. (a) Evidence of a statement by a declarant is
19 not made inadmissible by the hearsay rule if all of the
20 following conditions are met:

21 (1) The statement purports to narrate, describe, or
22 explain the infliction or threat of physical ~~harm~~ injury
23 upon the declarant by the party against whom the
24 statement is offered.



~~(2) The declarant is unavailable; and, in a criminal proceeding, the declarant's unavailability is a result of an action by the person against whom the statement is offered.~~ declarant.

(2) The declarant is unavailable as a witness pursuant to Section 240; and, in a criminal proceeding, the proponent of the statement establishes by a preponderance of the evidence that the declarant's unavailability is a result of an action by the person identified in the statement as inflicting or threatening physical injury upon the declarant.

(3) There is no evidence that the unavailability of the declarant was caused by, aided by, solicited by, or procured on behalf of, the party who is offering the statement.

~~(4) The statement was made at or near the time of the infliction or threat of physical harm, or the statement is corroborated by other evidence and the delay in making the statement is reasonable under the entirety of the circumstances.~~ *infliction or threat of physical injury. Evidence of statements made more than five years before the filing of the current action or proceeding shall be inadmissible under this section.*

(5) The statement was made under circumstances that would indicate its trustworthiness.

(6) The statement was made in writing, was electronically recorded, or made to a law enforcement official.

(b) For purposes of paragraph (5) of subdivision (a), circumstances relevant to the issue of trustworthiness include, but are not limited to, the following:

(1) Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.

~~(2) Whether the party against whom the statement is offered has previously committed an act of violence against the declarant.~~

~~(3)~~

1 (2) Whether the declarant has a bias or motive for
2 fabricating the statement, and the extent of any bias or
3 motive.

4 ~~(4)–~~

5 (3) Whether the statement is corroborated by
6 evidence other than statements that are admissible only
7 pursuant to this section.

8 (c) A statement is admissible pursuant to this section
9 only if the proponent of the statement makes known to
10 the adverse party the intention to offer the statement and
11 the particulars of the statement sufficiently in advance of
12 the proceedings in order to provide the adverse party
13 with a fair opportunity to prepare to meet the statement.

14 ~~SEC. 2.—~~

15 *SEC. 3.* This act is an urgency statute necessary for the
16 immediate preservation of the public peace, health, or
17 safety within the meaning of Article IV of the
18 Constitution and shall go into immediate effect. The facts
19 constituting the necessity are:

20 In order to permit the admission of important evidence
21 in various civil and criminal proceedings as soon as
22 possible, it is necessary that this act take effect
23 immediately.

